

**William V. Davis, M.D., a sole proprietor and  
Kathy Sue Wysong. Case 9-CA-27964**

March 23, 1993

### DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On January 7, 1992, the National Labor Relations Board issued an Order adopting, in the absence of exceptions, the decision of the administrative law judge, inter alia, directing the Respondent, William V. Davis, M.D., a sole proprietor, to make whole Kathy Sue Wysong, an individual, for her losses resulting from its unfair labor practices in violation of the National Labor Relations Act. On September 30, 1992, the United States Court of Appeals for the Sixth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due Kathy Sue Wysong, on November 5, 1992, the Regional Director for Region 9, issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent has failed to file an answer.<sup>1</sup>

By letter dated February 4, 1993, an attorney in the Board's Regional Office advised the Respondent that no answer to the compliance specification had been received and that unless an appropriate answer was filed by close of business February 9, 1993, summary judgment would be sought. The Respondent filed no answer.<sup>2</sup>

On February 19, 1993, the General Counsel filed with the Board a Motion to Transfer Proceeding to the Board and Motion for Summary Judgment and Memorandum in Support, with exhibits attached. On Feb-

ruary 25, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatee is as stated in the compliance specification and we will order payment by the Respondent to the discriminatee.

### ORDER

The National Labor Relations Board orders that the Respondent, William V. Davis, M.D., a sole proprietor, Swainesboro, Georgia, its officers, agents, successors, and assigns, shall make whole the individual named below, by paying her the amount following her name, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws:

Kathy Sue Wysong	\$12,960
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<sup>1</sup> The compliance specification and order scheduling place of hearing that was sent to the Respondent by certified and regular mail was returned to the Regional Office marked "unclaimed." The Respondent's failure or refusal to claim certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). The documents sent by regular mail were not returned. The failure of the postal service to return documents served by regular mail indicates actual receipt of those documents by the Respondent. See *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

<sup>2</sup> On February 5, 1993, personal service of copies of the compliance specification and notice of hearing, order scheduling place of hearing, and the letter dated February 4, 1993, was made on the Respondent at his principal place of business.